

Federal Defenders OF NEW YORK, INC.

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Via ECF

The Honorable William F. Kuntz, II
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Frank James, 22-CR-214 (WFK)

Your Honor,

In accordance with the Court's Order, we provide our current estimate of the applicable Guidelines calculation, as stated on the record.

Counts One Through Ten:

Applicable Guideline: U.S.S.G. § 2A2.2 – Aggravated Assault

Base Offense Level: 14 (§ 2A2.2(a))
Plus: +2 More than minimal planning (§ 2A2.2(b)(1))
 +5 Firearm discharged (§ 2A2.2(b)(2)(A))
 +5 Serious, permanent, or life-threatening bodily injury (§ 2A2.2(b)(3))¹

Adjusted Offense Level: 26

Pursuant to the grouping rules, Counts One, Two, Three, Six, Seven and Eight are each counted as one unit, totaling six units. U.S.S.G. § 3D1.4. Accordingly, the adjusted offense level of 26 is increased by five levels, to 31. *Id.*

Adjusted Offense Level: 31
Minus: -3 Timely acceptance of responsibility (§ 3E1.1)
 28

¹ This estimate applies to Counts One, Two, Three, Six, Seven, And Eight. The government has not yet provided medical records for the victims listed in the remaining counts, so the extent of their injuries pursuant to § 2A2.2(b)(3) cannot yet be calculated. Pursuant to § 3D1.4, however, this will not impact the calculation.

Count Eleven:

Applicable Guideline: U.S.S.G. § 2K2.4(b) – Use of a Firearm During Certain Crimes

The guideline sentence is the minimum term of imprisonment required by statute: 10 years. *Id.*, 18 U.S.C. § 924(c)(1)(A)(iii).

Guidelines Estimate

At Criminal History Category I, with a total offense level of 28, the guidelines range for Counts One through Ten is 78-97 months. With the additional 120 months for Count Eleven, which must be imposed consecutively to Counts One through Ten, the final, total guidelines range is 198-217 months.

Pursuant to Fed. R. Crim. P. 32, upon receipt of the Presentence Investigation Report (“PSR”), should the Probation Department reach a different guidelines estimate, we will file objections at that time.

Respectfully Submitted,

/s/
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